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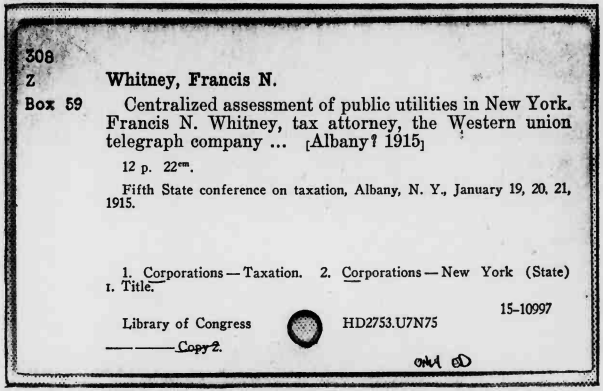

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FRANCIS N. WHITNEY
Tax Attorney
The Western Union Telegraph Company

FIFTH STATE CONFERENCE ON TAXATION
ALBANY, N. Y.
JANUARY 19, 20, 21, 1915

Centralized Assessment of Public Utilities in New York

FRANCIS N. WHITNEY
Tax Attorney
The Western Union Telegraph Company

FIFTH STATE CONFERENCE ON TAXATION
ALBANY, N. Y.
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CENTRALIZED ASSESSMENT OF PUBLIC UTILITIES IN NEW YORK

UNDER a general heading of Administrative Matters, on the program, you will find a sub-heading of Central and Local Administration and Assessment-Co-operation. I have been asked to say something in connection therewith, and will try to give my views, based on my experience here and elsewhere, on centralization of assessment of public service corporations and properties so used.

The experiment, if it may be so called, of centralization in tax administration, has been tried in many states, but never in New York. The experience of the practical administrators will, I believe, universally show that centralization is the only effective way of treating corporate property that is state wide in character. Under this heading naturally will fall properties of Railroad, Pipe Line, Express, Telephone, Telegraph, Transmission Lines and Car Companies, and in general all Public Utilities that operate in more than a single municipality or county. It must be admitted that local assessors are not selected on account of their qualifications for the task imposed, and are not equipped to assess a fraction of the property of the Public Utility that happens to be within the limit of the assessing jurisdiction. They will, I am sure, readily concur in this view. Of necessity they cannot be experts in appraisal of the many parts that go to make up a complicated system and have no means of determining the existence or absence of earning power, which alone determines value. It is unreasonable therefore, to impose a burden of this character upon the average local assessor. Based upon experience in other states, we may assume therefore, that unit assessment by a State Tax Commission or Commissioner has proven to be more effective and the more equitable method. I will not need to debate this question, but will accept it as demonstrated, that centralization has proven to be the wiser course and in time we may expect, that such a system will be put in force in this state.

The properties before enumerated, might with propriety be enlarged to include all corporations or individuals operating upon the public waters of a state, such as steamships, ferries, towing companies, car floats and property of like character. Centralization is not a novelty outside of New York and we are constantly surprised, when opinion may be asked by our citizens of tax officials or citizens of other states as to the wisdom of assessment of Public Utility corporations by central authority, to learn that they are amazed that such a question should arise. I know of no case where such a system has been the practice for some years in which there has been expressed any desire to return to the old method of local administration.

Here in New York we are faced with a situation based upon lack of theory and lack of desire to promote real equality. Our tax law has grown up, in the most part, from the necessity, on the part of the State, to secure increased revenue, generally as the result of extravagance or to meet the demand for enlarged public operations by the state. This has always been done with a desire to offend the voter as little as possible. In other words, the indirect method has been the easier way, and we find that there has been added, tax upon tax, upon public service corporations where there was absolutely no excuse or reason except that the Budget of the State had grown enormously from year to year. The average man in the street in New York does not care a picayune whether the state expenditures in any one year are $20,000,000 or $50,000,000. He does not realize that in the end he has to pay the bill, though in a very indirect way, of course, for the extravagances of the state. We will find, should it be attempted to establish a system for unit assessment of property of a public nature, that there will be active opposition on the part of the localities and the same jealousies will appear as would show themselves in New England should the legislature of the states there attempt to wipe out the town government. Must we, therefore, yield to this local jealousy? Would it not be better for all to view the matter in a broad, public-spirited way?

Centralization necessarily means release of some jurisdiction by local authorities. This release of jurisdiction, however, does

not necessarily carry with it the taking away of the revenue from the taxation of the properties located in cities, villages and towns. The purpose of centralization is to bring about real equality and amounts more to transfer of administrative power than real transfer of jurisdiction. In some states, Michigan and Wisconsin for instances, taxes from many, if not all public utilities are paid directly into the treasury of the state and used for state purposes. However, in a majority of the states assessments are fixed for the state as a whole and distributed to the local taxing unit. This is somewhat after the fashion of assessment of special franchises in this state. The values for counties, townships, school districts, cities and villages are certified to these local jurisdictions by the State Tax Commission and there placed upon the local tax roll for levy of tax, the same as properties still under the jurisdiction of the local assessor. No one would be rash enough to say that the result in all of these states where such a practice is in vogue, is ideal. In some instances, the central authority does not have ample funds to secure the necessary advice for intelligently assessing the many kinds of property that are under its jurisdiction. Just here let me say that a Tax Commission having such authority should be a permanent body, devoting its entire time and energy to the solution of the problems before them. In none of the states where we have ex-officio Boards of Equalization, do we find satisfactory results. You cannot expect a Board made up of a Governor, Secretary of State, Attorney General, State Treasurer, etc., to give adequate time and thought to what they are attempting to do. The result is that assessments in states where this practice prevails, are made by some clerk in the office of the working member of the Board. An ex-officio Board would appeal to no one here, and we have nothing to fear from that standpoint.

Coming now to the question of the disposition and division of the taxes upon properties assessed by the State Tax Commission. Personally, I do not believe in complete reservation of such taxes for use of the State or "separation" as it is called, and think a more healthy condition will always prevail if the citizens of the state are regularly called upon to bear directly

at least a part of the expense of state government. It would therefore follow that the revenue derived from assessment of property as a public unit should not be reserved for the use of the state. A part should be collected by or returned to the locality in which the physical properties of the company are located, and the balance should be for state purposes. In this state the policy which has been pursued for so many years will necessarily, to a large degree, control future legislation. It would be a very different matter and a problem of more easy solution if we could wipe out our practice and make a clean and new start. The treatment of the question must therefore be, to a large extent, arbitrary, and we cannot afford to interject the refinements of tax theories. Should this be attempted, many obstacles will arise and the result will be little relief from the chaotic condition which prevails today. Using the arbitrary method, therefore, it will perhaps be found that some properties from the nature of their use might be said to be properly reserved as sources of state revenue. These properties might include railroads, pipe-line, express, telegraph, car and long-distance telephone companies, but as I said before, personally, I do not believe in setting apart any large bulk of property for state revenue only. Street railroad companies, local lighting plants, telephone exchange companies, are to a large degree localized, and the revenue from such companies should be divided between the state and the locality upon some theory, if one may be found, or arbitrarily.

Should we attempt a solution of this problem in this state by centralized assessment, many of the present methods of taxation of corporations must be changed absolutely.

At present we have three kinds of state taxes—the organization tax (Section 180); the annual tax on capital or investment in this state (Section 182), that is, what is known as the franchise tax (for all corporations except banks, savings banks, title guaranty, insurance and surety companies, trust companies, etc.); and a further tax on transportation and transmission companies, known as an additional franchise tax, under section 184. This enumeration does not include the further burden upon corporations imposed under the provisions of Art. 11 and

Art. 15, that is, tax on mortgages and tax on secured debts, respectively. Every one knows that corporations must themselves pay the tax on all issues of mortgage bonds, in order to secure anything like a reasonable price therefor.

These corporations are further subject to local taxation on capital stock or personal property generally so-called, under the provisions of Section 12 of the Tax Law, and on real estate, including special franchises, in the taxing district in which the physical property is located. In addition, many corporations are required to make local franchise payments or licenses of a miscellaneous character. If we are to have centralization and state-wide assessment, all these miscellaneous forms of taxation must be consolidated. Naturally there will be much opposition, but it should be done and the state and localities affected must approach the solution of the problem with a desire for real co-operation, looking only to the final result. Change should not be made without a full understanding of the results that would necessarily follow the revamping of our Tax Law. This alone might deter many who otherwise would feel that readjustment should be made, but it is not a valid excuse. The tendency is to do a part of the work only, and you seldom find the state or the localities willing or patient enough to carry the proposition to its logical conclusion. There are so many questions involved that naturally it is almost impossible to show the facts to all affected and concerned. I know full well that individual criticism would result, with plausible argument against the course suggested, but no real advance has ever been made without the presence of the adverse critic. It would be better perhaps to turn the whole matter over to a qualified commission in order that the facts might be disclosed. Unfortunately, the facts are too often neglected and such disregard has landed us where we are to-day. Such a commission would be able to present a complete scheme and one that would not be unjust to the state or to any municipality. The plan suggested by such a commission might well be presented to the citizens of the state for their approval. It is certain, however, if a plan not well considered, and one which does not take into consideration the completed whole, is suggested for taxation of corporations in this state,

and if state-wide assessment is merely introduced as an additional feature in an already complicated situation, with a practical continuance of the present burdens, that they will be fully justified in strenuously objecting, on the ground that there has not been serious and intelligent consideration given to the proposed reform.

As said before, corporations in this state are subject to at least three, if not five, forms of state taxation. It is impossible for a group of individuals to carry on and perform the duties of a public utility without incorporation. The organization tax (Section 180) is, therefore, a most arbitrary and uneconomic exaction. If it were possible for an individual, for instance, to own and operate a steam railroad, there would be no organization tax. Incorporation for such purpose is not therefore voluntary and the only justification for such a tax is the fact that the power exists in the state to impose it. Applying the same rule to business generally, you will find the same objection valid.

The franchise tax (Section 182) is, as a matter of fact, an ad valorem tax on property within the state, though it is called by another name.

The additional franchise tax on transportation and transmission corporations (Section 184) is likewise a tax on property as it is fixed by the income derived from the use of the property which is taxed under Section 182. The Supreme Court of the United States has practically held an income tax to be a direct tax on property. The decisions of the Courts of this state interpreting these sections have sustained and interpreted them on theories never thought of when the taxes were imposed, with the result that there is admittedly multiple taxation upon the same property and earnings. This is particularly true in the case of so-called holding companies, a form of corporate activity which is, in many cases, necessary for proper efficiency in operation of public services. The present statutes of New York, however, seem to put a penalty upon corporations organized with these ends in view.

Again, the mortgage tax is a direct burden upon the ability to finance corporations of a public character, and the abominable

secured debts tax, so far as it is a tax, operates practically upon the corporation and not upon the owner of the securities, as intended. The secured debts tax can never be justified as a revenue measure. It is in fact, and intentionally so, an exemption measure.

The Act of 1899, defining and making taxable property in streets, highways and public places as special franchise, has placed upon the State Tax Commission the burden of solving a conundrum that it is absolutely impossible to solve. The courts have struggled with this problem ever since the passage of the act. In some cases they hold that the proper method to determine the value of a special franchise is by capitalization of net earnings, but in most instances such a rule is found to be unworkable, and has been absolutely and arbitrarily thrown aside and a conclusion reached by crude processes of elimination. The result usually is that all of the intangible value is held to be applicable to certain specified rights and to adhere only to the property located in streets, highways or public places, and the property of the same corporation—a part of the unit,—located upon private land has only the value as made up from its physical units. The intangible value, moreover, which it was contemplated would be reached by the special franchise law, necessarily takes in all the value that the corporation may have, and therefore at present is taxed again under the provision of the tax law which imposes a local tax at the home office of the corporation on its capital stock or personal property.

The assessment of tangible property of state-wide corporations that may be located off the streets is, as I have said before, a difficult problem for the local assessor. Those not familiar with the results would be surprised to see what these results really are. It is significant and helpful, at this point, to call attention to the fact that local assessors themselves have often expressed a desire to be relieved of this difficult work, which would leave them with more time to devote to the assessment of ordinary real and personal property. Would it, therefore, not be better to do away with the cumbersome machinery now provided by the tax law and substitute assessment by central authority for all corporations and all properties that naturally

fall into such a class? Should this be done, complications would arise as to the distribution of the tax derived under such a plan. Naturally the municipalities will demand their share of the proceeds, and I think they are entitled to participate in the yield. To do the work well it is necessary, therefore, to provide for a readjustment of state and local revenues by mutual study and co-operation. Logically, there should be an annual state tax upon all real and personal property, and I cannot see why there should not be such a tax. Of course, we all know that a large part of the personal property is now practically exempt under the mortgage recording tax provision and the secured debts law, and that there is no serious effort made to ascertain the ownership and to effectively assess the balance of personal property. The position we are in today is the result of exemption measure after exemption measure, and the desire on the part of some of the citizens of the state to relieve personal property from any tax whatever.

The immediate result of such a readjustment would be sufficient cause for protest by some municipality, but we cannot do the work before us piecemeal, and no question of immediate expediency should stand in the way of a just consideration of the whole question, and a logical solution, whether my way or yours. Corporations are certainly entitled to some consideration, although the history of the state for many years would indicate that they have no rights that the legislature or the citizens generally are bound to respect. If the time is now ripe for presentation of a logical tax scheme, corporations are entitled to fair treatment and they certainly will and must demand it.

All property in the state should be assessed at its full fair cash value and naturally if this test is applied to property now relieved through exemption or escaping through lack of desire to assess it, and it is brought under the provisions of a revised tax law, there will be much complaint. However, such complaint is not justified, and should not weigh in the consideration of the entire problem. This revision does not mean that there should be absence of classification. There are sound reasons why intangibles might be taxed at a lower rate than is applied to the tangible property of corporations or individuals. We

might substitute for instance, for the secured debts law an annual tax on intangibles at a reasonable rate, as has been done in Pennsylvania, Maryland, Minnesota, etc., or a tax somewhat after the form of the chose in action tax in Connecticut.

We must not lose sight of the fact that any statute providing for unit assessments, must of necessity specifically contain a direction for equality as compared with other real estate. The State Tax Commission must have power to equalize its assessments with assessments of real estate made locally, and not only should this power be vested in the Commission, but its exercise should be mandatory. Even such equalization of unit assessment does not bring the assessment of these properties on a par with all other property in the state. This for the reason that all the personal property of such companies would be assessed at the full value, while the personal property of individuals is seldom taxed at all, or, if taxed, it is at a reduced rate. It is evident, therefore, that unit valuation will not grant any special favors to the corporations thus assessed.

I cannot close without referring to a discussion of the taxation problem in New York by Prof. Charles J. Bullock of Harvard University. It is almost impossible for me to understand how he could have analyzed the situation here as completely as he has done, without living with it from day to day. The Real Estate Magazine of April, 1914, contained Professor Bullock's article, and I ask leave to print that article as part of my remarks. This for the reason that it has great historical value and should be made a part of the permanent records of these conferences. I will quote, however, one paragraph from his paper:

> The obvious present need in New York is the development of the state tax commission into a body clothed with ample power and resources to control in an effective manner the administration of the tax laws of the state of New York. In such action Wisconsin and other states have already led the way, and can supply the needed model. Students of taxation are generally agreed that the task of the immediate future in every state is to perfect methods of administration, and that without better administration mere changes in legislation are likely to be largely or wholly futile.

I am willing to admit that my judgment may be biased on account of my association with a corporation that is subject to the many vagaries of the New York law. However, let me say that I deal intimately with the tax laws and tax administrators in the forty-eight states of the Union and my conscientious belief is that nowhere may be found a more illogical or unjust system than right here at home.

This subject was given serious consideration at the first state conference held at Utica in 1911, and I desire to refer you to address of Mr. Harrison Williams, at that time Tax Agent of the Erie Railroad Company, found at page 185 of the first printed volume. Also to the remarks of Professor Seligman in the same volume at page 198. It is unnecessary for me to quote from these able addresses as you all have or may secure the volume and read them for yourselves.

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